

Christina Fischhauser\*

Hermann J. Knott, *Der Anspruch auf Herausgabe gestohlenen und illegal exportierten Kulturguts [The Right to Claim Restoration of Stolen and Illegally Exported Cultural Goods]*. Nomos Baden-Baden (1990) 202 pp. (Arbeiten zur Rechtsvergleichung, 147).

In this doctorate thesis submitted to and approved by the University of Cologne questions concerning the illegal art trade have been answered systematically. The essay is divided into three parts. In his introduction the author describes the conflicting interests of states of origin and the increase of illegal transactions in the art trade.

Part one deals with the substantive law on the acquisition of works of art and on the owner's right to claim restoration. The author focuses on American law: the Uniform Commercial Code, the law of New York and that of New Jersey. He examines thoroughly born theory and practice<sup>1</sup> and discovers different solutions upon which he comments. On the other hand, some European legal frameworks are only cursorily treated. Considering the rules of conflict of laws adopted in most states (*lex rei sitae*), the

author examines deviations from this rule. In this connection he examines the escape clause of the closest relation, as for instance provided for in Article 15 of the Swiss Federal Statute on International Private Law (IPRG). According to the author this escape clause does not apply because the transfer of title is always most closely related to the *lex rei sitae* at the time of transfer.

Part two is devoted to the right to claim restoration based on export regulations of the state of origin and the question whether these export regulations are enforced in the state of import. This problem is thoroughly analysed on the basis of the English case *Attorney General of New Zealand v Ortiz*.<sup>2</sup> American law is also considered in detail as well as the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>3</sup> (especially the important Articles 7 and 9). Unfortunately the author did not examine the same European states in part one and two of his thesis so that no complete national picture of the illegal art trade emerge. The author wants to restrict export regulations to 'important works of art'. But what are 'important works of art'?

\* Zurich University.

In part three the author focuses upon recent efforts to unify law in this field. He compares the relevant articles of the UNESCO Convention<sup>4</sup> and the draft UNIDROIT Convention on the acquisition in good faith of corporeal movables.<sup>5</sup> The author explains the difficulty in distinguishing cultural goods from other movable objects, and the various possibilities to regulate acquisition in good faith and those obstacles to enforcing foreign export regulations. Whether his opinion will be shared in the future remains to be seen, especially after the enactment of the draft UNIDROIT Convention on stolen or illegally exported cultural objects.<sup>6</sup>

This work is not to be considered as a guide for gallery staff and art dealers. It furnishes, however, some extremely useful information to lawyers interested in the protection of cultural goods.

## Notes

- 1 The practice has been taken into account up to the beginning of 1990.
- 2 *Attorney General of New Zealand v Ortiz* [1984] AC 41 (H.L.).
- 3 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, Paris, 14 November 1970, (10 (1971)) Int. Leg. Mat. 289.
- 4 Ibid.
- 5 Uniform Law on the acquisition in good faith of corporeal movables (LUAB), 1974, a draft of the International Institute for the Unification of Private Law, study XLV – Doc. 55 (1974) = Uniform Law Review 1975 1 79–83.
- 6 Convention on stolen or illegally exported cultural objects (1990), a draft of the International Institute for the Unification of Private Law, study LXX-Dox. 19 (1990).